

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, FEBRUARY 8, 2018

Presiding: Mayor David D. Ogden
Meeting Convened at 6:30 p.m.
Prayer: Dave Ogden
Pledge of Allegiance

Present: Mayor David D. Ogden; Clerk-Treasurer Wendy McLaughlin; Councilors Brent Barrus, Vaun Waddell, and Bruce King; City Public Works Director Zane Baler; City Building Inspector Cliff Morris; Forsgren Associates Representative Randy Johnson; The Development Company Manager Ted Hendriks; *Standard Journal* reporter Adam Jacobs; Citizens: Oakley Colton, Timothy Frogue, Staci Hill, Brenden Lockhart, Bert McLaughlin, Judy Nelson, and Connor Wood. Councilor Joy M. Ball was excused.

MINUTES: Mayor Ogden asked if there were any corrections to the minutes of the regular meeting held on January 25, 2018. Each councilman had a copy of the minutes prior to the meeting. It was moved by Councilman Barrus and seconded by Councilman Waddell to accept the minutes, with technical errors corrected; motion carried.

RECONCILIATION REPORTS: Wendy presented the January reconciliation reports for the General Fund. It was moved by Councilman Waddell and seconded by Councilman King to accept the January reconciliation reports for the General Fund; motion carried. Wendy presented the January reconciliation reports for the Utility Fund. It was moved by Councilman King and seconded by Councilman Waddell to accept the January reconciliation reports for the Utility Fund; motion carried.

Wendy presented the current bills in the amount of \$77,335.78. It was moved by Councilman Waddell and seconded by Councilman Barrus to pay the current bills, together with all regular February bills; motion carried.

PLANNING AND ZONING COMMISSION REPORT: Dave Thompson reported that the commission met last night at a special Planning and Zoning work meeting to discuss the Land Use Table to include “Cottage Homes” and other item details and to set a public hearing date. However, they were again unable to set a public hearing date. They will discuss it at their next meeting on Thursday, February 15, 2018.

Design Review: Chairman Thompson reported that the Design Review Board met to review the revised remodel plans for the old Desert Gem Farm building owned by Jeff Parkinson located on 107 N. Railroad in Sugar City. The committee discussed and addressed parking issues and fire code requirements.

City Special Use Permit Public Hearing: The public hearing for the city’s application for a special use permit for a well site on 2 acres in Division 3 of Old Farm Estates is scheduled for next Wednesday, February 21, 2018, at 7:00 p.m.

Tyson Harris Resignation: Tyson Harris announced his resignation from the commission, effective in March.

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) LOAN OFFER AND GRANT REVISIONS: Ted Hendriks and Randy Forsgren were on hand to answer any questions from the council on the loan offer from DEQ to install a new well and tank for the city by the bond passed in the 2017 November election. The bond note is for \$3.7 million, at 1.5% interest for 20 years (a 30-year loan is not available for this type of water project). Citizens will see an additional monthly increase to the water portion of their utility bill of another \$10.25 to the base fee, for a total of \$44.25 per month and an increase of \$0.08 to the water usage rate from \$0.90/thousand gallons, for a total of \$0.98/thousand gallons of usage. The projected increase is just under what was predicted last fall. The council did not discuss when the new rates would take effect.

The mayor is working diligently to cut costs where he can on the bond, and with the developer to come up with their participation. DEQ will provide both short-term (construction of well and tank) and long-term (bond) financing at the fixed rate.

The council also approved an amendment to the Facility Planning Study (FPS) to include a water line down to the Moody road. The original study awarded \$50,000 for the study; the amendment would increase the award to \$72,100.

MOTION: It was moved by Councilman Barrus and seconded by Councilman King to approve amendment to the FPS; motion carried (see Attachment #1).

RESOLUTION NO. 2018-2 (Approve the DEQ Water Bond Loan Offer) – Resolution No. 2018-2 was read in full by Councilman Barrus.

MOTION: It was moved by Councilman Barrus and seconded by Councilman Waddell to adopt Resolution No. 2018-2. Motion carried. Thereupon the clerk called roll upon the motion.

Those voting aye: Councilmen King, Waddell, and Barrus

Those voting nay: None

Councilwoman Ball was excused

A copy of said resolution is attached hereto marked "Attachment #2."

MAYOR'S REPORT: The mayor reported on the following items:

Flood Plain Update: City employees attended a training session in Rexburg for the flood training certification. City Public Works Director Zane Baler and Assistant Public Works Director Arlynn Jacobson will attend a certification meeting in July at a cost of \$300 each to become the city's flood plain administrators.

State of the City/County Breakfast Report: The breakfast was very well attended and fostered city/county relationships. Feedback from those attending was positive.

River Bend Ranch Cost Sharing Agreement Report: The mayor met with the River Bend Ranch developers last week. They are planning on continuing their development project, which was put on hold for a year. They are also working with the county on how to mitigate the flood plain issues. They plan to be up and running within the next 12 months.

Water Bond Report: See above.

Tree & Beautification Committee Update: The mayor reported that the Tree and Beautification Committee is fully manned now with Todd and Tammy Tolman, Stephanie Blaine, Alaina Sharp, Karey Tingey, Mike and Beth Wegner, and Leticia Garcia. They will meet

Wednesday, February 21, 2018.

New Impact Area Report: The mayor reported that he had a meeting with the County Planning and Zoning Chairman Bradley Petersen and Rexburg City Mayor Jerry Merrill on the proposed impact boundary lines. Mr. Petersen proposed to work with the county attorney to determine the process to bring together the three parties – Sugar City, Rexburg, and Madison County – through their planning and zoning commissioners to determine the appropriate impact areas and where they might border each other.

CODE REVISION TO ALLOW CERTAIN LARGE ANIMALS WITHIN THE CITY:

The council reviewed and discussed the best way to amend the current animal code to allow certain large animals under conditions that appear to be beneficial to both the city and property owner on a case-by-case basis. The current animal code does not allow large animals within the city. Councilmen Waddell and King felt softening the “extraordinary hardship” wording in Chapter 6, “Council,” of the City Code (title 1-6-1-B-13) would be better than adding an additional paragraph in the animal ordinance to allow certain animals. Councilman King made a motion to amend title 1-6-1-B-13 per Councilman Waddell’s suggestions, but it was tabled until the next meeting to allow Councilwoman Ball to be present.

TEST WELL DRILLING CONTRACT: The council majority, with Councilman Waddell abstaining and Councilwoman Ball calling in, did not approve the test well drilling contract or agreement, even with a stipulation to proceed after the public hearing for the special use permit to the city for its well site. Councilors King and Ball felt it best to wait until after further discussion on the cost-sharing agreement as well. Councilman Barrus was not in agreement and felt the delay could cost the city thousands of dollars in extra costs postponing calendaring projects ahead of the drilling season. He also wondered why the cost-sharing agreement should be tied to the test well drilling contract. Councilwoman Ball felt there would be no negative impact to the city if the council delayed their approval. The request was tabled until the meeting in which the special use permit recommendation will be heard.

ASSOCIATION OF IDAHO CITIES (AIC) ANNUAL TRAINING MEETING: The council was invited to attend the annual AIC conference in June. There will also be a spring training specifically for council members and mayors in Idaho Falls in April.

FARMER MERCHANT BANQUET DATE AND POSSIBLE COUNCIL MEETING

POSTPONEMENT: The regular City Council meeting for Thursday, March 8, 2018, will be moved to Saturday, March 10, 2018, at 9:00 a.m. because of the annual schedule conflict with the Farmer Merchant Banquet.

DEPARTMENT REPORTS:

COUNCILMAN BARRUS: No report.

COUNCILMAN WADDELL: No report

COUNCILWOMAN BALL: No report

COUNCILMAN KING: No report.

Meeting adjourned at 8:50 p.m.

Signed: _____
David D. Ogden, Mayor

Attested: _____
Wendy McLaughlin, Clerk-Treasurer

**AMENDMENT TO THE AGREEMENT
BETWEEN
CLIENT AND FORSGREN ASSOCIATES, INC.
FOR ENGINEERING SERVICES**

WHEREAS:

FORSGREN ASSOCIATES, INC. ("FORSGREN") entered into an Agreement on February 11, 2016 to perform engineering services for Water Facilities Planning Study (FPS) ("Project");

The City of Sugar City ("CLIENT") desires to amend this Agreement in order for FORSGREN to perform services beyond those previously contemplated;

FORSGREN is willing to amend the original Agreement and perform the following additional engineering services:

SECTION I. AMENDED SCOPE OF SERVICES

ENGINEER will provide additional services for the Project, including updated the current FPS to include evaluation and discussion of Secondary Irrigation as part of the proposed alternative. A detailed Scope of Services for the additional work is described in the attached Exhibit A.

SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The "Forsgren Associates, Inc., Terms and Conditions for Professional Services" shall remain unchanged other than those sections and exhibits listed herein.

SECTION III. AMENDED RESPONSIBILITIES OF OWNER

The CLIENT responsibilities shall be amended from the original Agreement to include provision of system data and document review and approval as outlined in Exhibit A.

SECTION IV. AMENDED COMPENSATION

Compensation for ENGINEER'S services under this Agreement shall be in the amount not to exceed Thirteen Thousand Three Hundred Dollars (\$13,300.00) distributed among the following tasks. Payment shall be on a lump sum basis for all tasks. Any additional services requested and approved by the Client beyond the tasks outlined in the agreement scope shall be compensated on a time and materials basis.

<u>Lump Sum Tasks</u>	<u>Cost</u>
100 Project Management	\$1,000
200 Planning	\$9,000
300 Environmental	\$3,300
400 Preliminary Design	\$0

**Sugar City
Agreement**

**Water System Facilities Planning Study
01-16-0036**

500 Design	\$0
600 Bid Services	\$0
700 Construction Administration – <i>Engineering Services</i>	\$0
800 Land Surveying - Topo/Design Survey	\$0
800 Land Surveying - Preliminary / Final Plat	\$0
900 Additional Services - Representation at Local Jurisdiction.	\$0
TOTAL	\$13,300.00

Ordinary reimbursable expenses defined as local transportation, computer usage, telephone, and postage are included in the lump sum amount. Ordinary reimbursable expenses defined as local transportation, computer usage, copies, telephone, and postage, shall be added to the time and materials tasks in the form of a \$5 per billed manhour and labeled a *Reimbursable Project Expense*. The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER'S compensation as Reimbursable Expenses.

Compensation terms are defined as follows:

Time and materials shall mean compensation for reimbursable expenses plus compensation for labor based on rates extracted from the current rate table for specific labor categories that include direct labor cost, indirect labor cost, and profit.

Lump Sum shall mean a fixed amount, which shall be the total compensation agreed upon in advance for Scope of Services. For lump sum tasks, ordinary reimbursable expenses defined as transportation, travel, meals, lodging, subconsultants, subcontractors, computer usage, telephone, telex, shipping and express are included in the lump sum amount.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation, travel, meals, lodging, subconsultants, subcontractors, computer usage, telephone, telex, shipping and express, and other incurred expense. ENGINEER will add ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover supervision, administrative, and insurance expenses.

SECTION V. PERIOD OF SERVICE

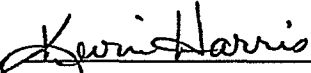
Upon receipt of written authorization to proceed, ENGINEER shall perform provide the first draft of the updated FPS within 90 days. This schedule does not include the public involvement, DEQ review, revisions based on the public involvement, or the DEQ and City reviews.

Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

SECTION VI. AUTHORIZATION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

FORSGREN ASSOCIATES, INC.
"ENGINEER"

BY: 

NAME: Kevin Harris, P.E.

DATE: Jan. 5, 2017

TITLE: Division Manager

CITY OF SUGAR CITY
"OWNER"

BY: 

NAME: David D. Ogden

DATE: Jan. 31, 2017

TITLE: Mayor

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A

SCOPE OF SERVICES

Project Owner: Sugar City, Idaho
Project Title: Water System Facilities Planning Study Revision

Project No. 01-16-0036

EXHIBIT A - SCOPE OF SERVICES

Section 100 – Project Management

Section 200 – Planning

Section 300 – Environmental

Section 400 – Preliminary Design (not used)

Section 500 – Design (not used)

Section 600 – Bid Services (not used)

Section 700 – Construction Administration (not used)

Section 800 – Survey (not used)

Section 900 – Additional Services

SCOPE OF SERVICES

GENERAL

This scope of services describes the work Forsgren Associates, Inc. (ENGINEER) anticipates performing on behalf of the City of Sugar City, Idaho (OWNER), to complete a Water System Facilities Planning Study (PROJECT). The expected product of this project is a document that outlines the current water system capacity, identifies potential impacts from proposed development and future growth, and provides recommendations for future plans. Subsequent to City acceptance of the recommendations contained in the study, the possibility exists the consultant will be retained for the production of design documents describing improvements to the water system, bidding assistance, construction management, and post construction services. The Scope of Services described in the sections that follow identifies in detail the initial work necessary to evaluate the culinary water system and recommend improvements.

Background

Objective of project: develop secondary irrigation system conceptual design and costs to incorporate into selected alternative for completion. These efforts will not only provide the City with the technical information on which to base decisions, but will also provide the means whereby the City can establish requirements for development consistent with their ordinances and engineering recommendations regarding their water system.

SECTION 100 – PROJECT MANAGEMENT SERVICES

Project management is incorporated into subsequent work tasks.

SECTION 200 – PLANNING SERVICES.

The following tasks are anticipated as part of the preparation of the Secondary Irrigation Alternative for the Water Facilities Planning Study:

Task A. Introduction

No change

Task B Existing Conditions

Modify the existing conditions hydraulic model and report section to incorporate/describe the following:

1. Existing surface water rights that are available for irrigation
2. The value of a proactive approach to reducing groundwater use in light of the Idaho Department of Water Resources designation of the Eastern Snake River Plain Aquifer as a Groundwater Management Area.
3. Revised system demand assuming large irrigation areas (parks) can be removed from the potable water system demand.

Task C Future Conditions

Modify the future conditions hydraulic model and report section to incorporate/describe the following:

4. Revised water use projection that consider secondary irrigation of park areas associated with new developments. This analysis will only consider secondary irrigation for large open space areas, not for individual properties.
5. Update system model considering modified peak demand.
6. Update facilities needed for a 20-year period and distribution piping systems associated with or impacted by new developments needed for a 40-year period.

Task D Development and Screening of Alternatives

Modify the alternatives development section to incorporate/describe the following:

1. Update description of problems/deficiencies with the existing water system to be corrected by the project. Include discussion regarding reduction of groundwater use.
2. Develop secondary irrigation system alternatives. Develop three alternatives and evaluate each alternative's effectiveness, capital cost, operation & maintenance cost, ease of operation, energy consumption, etc.
3. Modify storage requirements based on inclusion of secondary irrigation.
4. Modify pumping/source requirements based on inclusion of secondary irrigation.
5. Evaluate changes, if any, to system classification or operator licensure

Task E Final Screening of Principal Alternatives and Plan Adoption

Modify the alternatives screening and plan adoption section to incorporate/describe the following:

1. An evaluation of proposed secondary irrigation system costs.
2. Incorporate the secondary irrigation improvements into the evaluation of impacts on water supply and source reliability
3. Incorporate the secondary irrigation improvements into comparison of alternatives based on a broad-brush environmental analysis.

Task F Selected Plan Description and Implementation Arrangements

The implementation plan will be updated to incorporate the modified alternative with a secondary irrigation component. Specific activities will include the following:

1. Updating justification and a description of the selected plan.
2. A preliminary design of the secondary irrigation system (including maps and site plans). Include a computer model of the proposed system showing flows and system pressures.
3. Cost estimates with the revised tank and well sizes and secondary irrigation system including monthly charges.
4. Additional elements needed for secondary irrigation implementation. This could include service agreements, financing arrangements, operation & maintenance requirements, a project schedule, and/or certification of operators.
5. Obtain public input. The ENGINEER will assist the OWNER in their public input campaign by preparing presentation materials and attending one (1) public meeting to disseminate information on alternatives for water system improvements.

Task G Environmental Information Documents

This section includes efforts to update the summary of environmental conditions in the Facilities Planning Study document, which identifies possible impacts to environmentally sensitive resources, and summary of conditions identified including the following:

- a. Physiography, topography, geology, soils

Description should not require revision since proposed design is in the same general

area evaluated initially.

- b. Surface and groundwater hydrology
Description should not require revision since proposed design is in the same general area evaluated initially
- c. Fauna, flora, and natural communities
Description should not require revision since proposed design is in the same general area evaluated initially
- d. Housing, industrial, commercial development
Description should not require revision since proposed design is in the same general area evaluated initially
- e. Cultural resources
Prepare revised consultation with Tribes and the State Historical Preservation Office.
- f. Utility use
Update utility description to include secondary system.
- g. Floodplains/wetlands
Revise floodplain discussion to include secondary irrigation system area. Consult with IDEQ regarding the need for additional consultation.
- h. Wild/Scenic Rivers
No change.
- i. Existing drinking water system
No change.
- j. Public health considerations
No change.
- k. Prime agricultural land protection
Coordinate with DEQ to update NRCS assessment.
- l. Proximity to sole source aquifer
Update discussion and obtain revised concurrence from EPA.
- m. Land use and development
No change.
- n. Environmental justice
Determine if inequities are inherent in the project regarding demographic groups.

Appendices

This section includes any relevant additional information in this section. This could include relevant engineering data, a user fee ordinance, an O&M budget, environmental information and decision notices, additional charts/figures, mailing lists, correspondence, computer output data, etc.

Owner Responsibilities

1. Provide existing system data including as-built drawings for the storage reservoirs and distribution system, as-built drawings for the water sources, flow records, water quality records, and land use planning information.
2. Review and comment on the draft Water Facilities Planning Study document.

Deliverables:

1. Four (4) copies of the draft Water Facilities Planning Study document.
2. Four (4) copies of the final Water Facilities Planning Study document.

SECTION 300 – ENVIRONMENTAL

Update the Environmental Information Document (EID) as follows:

1. Update Project Cost and Funding to reflect modified project
2. Update User Cost information to reflect modified project.
3. Revise purpose and need statement to reflect inclusion of secondary irrigation
4. Revise alternatives description to include secondary irrigation system.
5. Revise alternatives analysis to include secondary irrigation system
6. Revise project description and proposed project Figure to represent modified project.
7. Revise water demand summary for existing and future conditions
8. Incorporate findings from Task G above into the EID.
9. Update description of environmental impacts and proposed mitigation to incorporate modified project components

If additional work is required such as wetlands delineation, biological assessment, archeological site investigation, etc., they will be considered an additional service in which additional cost will apply. If this occurs, we will review these cost with the Client prior to proceeding.

Forsgren Associates, Inc.
Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation Insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. Upon request, OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project. OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such

services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the Terms & Conditions for Professional Services 2 (10/2001) parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services does not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that

ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17.

18. LIMITATION OF LIABILITY

ENGINEER's and its employees' total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's and its employees' professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and OWNER hereby releases and holds harmless ENGINEER and its employees from any liability above such amount.

19. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

20. INDEMNIFICATION

The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, and employees (collectively OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the ENGINEER's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the ENGINEER is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.

Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

The City of Sugar City, Idaho

Resolution No.: 2018 - 2

"A Resolution to Approve the Offer of Loan #DW1806 Issued by the Idaho Department of Environmental Quality in the Amount of \$3,700,000, to Purchase the Bond Approved by Sugar City Residents in November of 2017."

WHEREAS, the Council of the City of Sugar City, Idaho desires to approve the Offer of Loan #DW1086, from the Idaho Department of Environmental Quality, which will purchase the Bond approved by Sugar City residents in November of 2017; and

WHEREAS, the Idaho Department of Environmental Quality issued the loan offer, subject to certain conditions, to the City of Sugar City, which loan will be used to purchase the aforementioned Bond; and

WHEREAS, the majority of residents of the City of Sugar City approved the Bond, for the purpose of upgrading and expanding the existing water system, in the November 2017 general election;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SUGAR CITY, AS FOLLOWS:

The City Council of the City of Sugar City, Idaho hereby approves the attached Offer of Loan #DW1086, from the Idaho Department of Environmental Quality, agrees to its terms and conditions, and authorizes the Mayor to execute any and all documents required in the loan offer.

PASSED by the Council of the City of Sugar City on this 8th day of February, 2018

APPROVED by the Mayor of the City of Sugar City on this 8th day of February, 2018.

(SEAL)

David D. Ogden,
Mayor

ATTEST:

Wendy McLaughlin,
City Clerk - Treasurer